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MM Docket No. 01-81

NOTICE OF PROPOSED RULE MAKING

Adopted: March 21, 2001

Released: March 30, 2001

Comment Date: May 21, 2001

Reply Comment Date: June 5, 2001

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 01-80; RM-10089

Petitioner: Stargazer Broadcasting, Inc.

David P. Garland, President
Stargazer Broadcasting, Inc.
P. O. Box 519
Woodville, Texas 75979

Proposal: Allot Channel 237C3 at Eagle Lake, Texas, as the community's first local aural transmission service.¹

Community**Present****Proposed**

Eagle Lake, Texas

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237C3

Coordinates: 29-35-15 NL and 96-30-03 WL

Additional Information: This allotment requires a site restriction 16.4 kilometers (10.2 miles) west to avoid short-spacings to the licensed sites of Station KVIC(FM), Channel 236C3, Victoria, Texas, and Station KIKK-FM, Channel 239C, Houston, Texas.

FCC Contact: Sharon P. McDonald (202) 418-2180

¹Eagle Lake is an incorporated community located in Colorado County and has a 1990 U.S. Census population of 3,551 person, and a 1996 estimated population of 3,774 persons. Petitioner states that Eagle Lake is a Class A General Law City with a City Manager-Council form of government. It has a post office and a zip code (77434).

Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in his comments.

B. MM Docket No. 01-81; RM-10090

Petitioner: Montana Magic Investments, Inc.

Roger Lonnquist
Montana Magic Investments, Inc.
Post Office Box 4218
Helena, Montana 59604

Proposal: Allot Channel 293A at Montana City, Montana, as the community's first local aural transmission service.²

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Montana City, Montana	---	293A

Coordinates: 46-33-43 NL and 111-57-39 WL

² Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies " . . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Montana City is not listed in the U.S. Census. Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Montana City is incorporated, or that it has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. See, e.g., Beaver Springs, Pennsylvania, 4 FCC Rcd 5373 (1989), Sargent, Nebraska, 4 FCC Rcd 3933 (1989), Bartow, Georgia, et al., 4 FCC Rcd 6876 (1989), East Hemet, California, et al., 4 FCC Rcd 7895 (1989), and Ellwood, California, 50 Fed. Reg. 13031, published April 2, 1985. We note that Montana City is listed in the 2000 Rand McNally Commercial Atlas and attributed with a population of 300 persons. However, mere geographical location is not sufficient to establish "community" status. See, Vimville, Mississippi, 48 FR 5974 (1983).

Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in his comments.

Additional Information: This allotment requires a site restriction of 3.8 kilometers (2.4 miles) north to avoid a short-spacing to the licensed site of Station KWYS-FM, Channel 293C, Island Park, Idaho. Since Montana City is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

FCC Contact: Sharon P. McDonald (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **May 21, 2001**, and reply comments on or before **June 5, 2001**, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically

waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall

be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.